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OFFICE OF PETITIONS

In re Patent No. 7,253,189 :
Issued: August 7, 2007 : LETTER REGARDING PTA
Application No. 10/721,015 :
Filed: November 21, 2003 :
Atty. Dkt. No.: AL01562K :

This letter is in response to the "Request for Reconsideration of Patent Term Adjustment Under 37 C.F.R. § 1.705(d)," filed September 5, 2007. The Office thanks patentees for their good faith and candor in bringing this to our attention.

The above-identified application matured into U.S. Patent No. 7,253,189 on August 7, 2007. The patent issued with a patent term adjustment (PTA) of 110 days. Patentees indicate that the adjustment of 110 days is thought to be longer than appropriate and indicate that the correct period of adjustment is 99 days. In particular, patentees indicate the patent was improperly adjusted 11 days "pursuant to 35 U.S.C. § 154(b)(1)(B), the 3-year pendency guarantee."

A careful review of the application history does not reveal an error in the adjustment. The adjustment of 259 days for Office delays was properly reduced a total 149 days for applicants' failures to engage in reasonable efforts to conclude prosecution.

Patentees indicate the adjustment of 11 days is inappropriate because applicants filed a Notice of Appeal on March 16, 2007. The filing of a Notice of Appeal which does not result in action being taken by the Board of Patent Appeals and Interferences does not effect the applicability of the provisions of 35 USC 154(b).

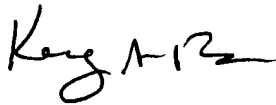
Accordingly, at the time of issuance, the patent was entitled to an adjustment of 110 days, as indicated on the patent.

Patentees are invited, if appropriate, to submit a response setting forth with specificity the perceived error in the patent term adjustment calculation.

As applicants are advising us of a potential error in providing too much patent term adjustment in this application, no fee is due in connection to this matter.

Applicants are given 30 days to file a request for reconsideration of the instant decision. No additional time will be granted under 37 CFR 1.136.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

A handwritten signature in black ink, appearing to read "Kery Fries", with a stylized flourish at the end.

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy